
OPINION OF THE PUBLIC ACCESS COUNSELOR

ERIN M. BREWSTER,
Complainant,

v.

BOONE COUNTY COUNCIL & AUDITOR,
Respondent.

Formal Complaint No.
18-FC-124

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Boone County Council and Auditor (“County”) violated the Access to Public Records Act¹ (“APRA”). Attorney Robert V. Clutter filed a response on behalf of the County. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on September 20, 2018.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Erin M. Brewster (“Complainant”) filed a formal complaint alleging the Boone County Council and Auditor (“County”) violated the Access to Public Records Act (“APRA”) by improperly denying her access to disclosable public records.

At the Council meeting on July 10, 2018, Brewster requested a copy of a board packet distributed only to Council members. That request was denied until the meeting minutes were ratified at a subsequent board meeting. Following those instructions, Complainant submitted a follow-up request on August 30, 2018. After filling out a written request, as was then advised on September 5 and told to wait to request the documents until after the county budget adoption. After a follow-up, the county denied Brewster’s request for being “overly broad and burdensome.”

As a result, Brewster filed a formal complaint with this Office.

In its answer to the complaint, the County claims that it justifiably denied Brewster’s request in accordance with state law. Specifically, the County reiterates its claim that Brewster’s request was overly broad and burdensome; and, therefore lacks reasonable particularity under APRA.

ANALYSIS

The primary issue in this case is whether the Boone County government rightfully denied access to public records.

1. The Access to Public Records Act

The Access to Public Records Act (“APRA”) states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1.

The Boone County Government (“County”) is a public agency for the purposes of the APRA; and thus, subject to the Act’s disclosure requirements. Ind. Code § 5-14-3-2(n). Therefore, unless an exception applies, any person has the right to inspect and copy the Counties public records during regular business hours. Ind. Code § 5-14-3-3(a).

At the outset, it is worth mentioning that all requesters, regardless of the worthiness of their request, are legally entitled to a statutory justification for the denial of documents *contemporaneous with the denial*.² I say this globally to all agencies, but merely relying on tired statements that a request is “overly broad and burdensome” is not sufficient and is highly indicative of a pretextual and dismissive abdication of responsibility.

² Ind. Code § 5-14-3-9(a): a public agency may deny the request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record.

Here, Brewster asked for a board packet and documents associated with a meeting. This typically means simply the board packets themselves and the minutes. This is a very routine request in the experience of this Office. There is no indication that the request was broadened beyond the packets provided at the July 10 meeting to include—as the County suggests—all documents ever contemplated by the Council in the development of the budget.

As noted in the County’s response, the correct term is “reasonable particularity.”³ And while it is indeed the responsibility of a requester to craft a request with a degree of specificity, pinpoint accuracy is not required to meet that standard. What is more, this Office has advised public agencies *ad nauseum* to invite a constituent to tailor the request instead of denying it outright. The County did not do that here.

To the extent the County requires a constituent to be so knowledgeable of institutional operations or clairvoyant to conjure the individual name of each and every government document, that notion is folly. Asking for a document or set of documents in layman’s terms is sufficient so long as the request is not overwhelmingly universal. A request should be received with reasonable interpretation and rational rectitude. Esoteric sophistication is unnecessary. The County appeared to know exactly what Brewster’s request entailed until suddenly it didn’t.

Lending credence to this is the fact that before the County changed its tune about the particularity of the request, it denied Brewster’s request because minutes had not been ratified, and then because the budget had not been adopted.

³ Ind. Code § 5-14-3-3(a)(1).

However, neither of these reasons are exceptions to disclosure under Indiana law. If a public document is going to be withheld, it must be in accordance with statutory justification. The County's response does not expound upon those justifications and they will not be addressed herein.

Finally, the County's response appears to suggest that Brewster had a different sort of standing as requester because of her candidacy for County Council in the November 2018 election. This should be completely immaterial and political motivations an irrelevant factor in the responsiveness to public records requests.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Boone County Council and Auditor violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the name of the Public Access Counselor.

Luke H. Britt
Public Access Counselor